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13 UNITED STATES DISTRICT COURT
14 WESTERN DISTRICT OF WASHINGTON
15 AT SEATTLE

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17 PACIFIC BIOSCIENCE
18 LABORATORIES, INC., a Washington
19 corporation,

20 Plaintiff,

21 v.

22 NUTRA-LUXE M.D., LLC, a Florida
23 limited liability company,

24 Defendant.

25 No.

26 COMPLAINT FOR PATENT
27 INFRINGEMENT

28 **JURY DEMAND**

31
32 Plaintiff Pacific Bioscience Laboratories, Inc. (“PBL”), for its Complaint for Patent
33 Infringement against Defendant Nutra-Luxe M.D., LLC, (“NutraLuxe”), hereby alleges, by and
34 through its attorney, on personal knowledge as to its own actions and on information and belief
35 as to the actions of others, as follows:

36 **I. INTRODUCTION**

37 1. Plaintiff PBL dramatically changed the market for skin cleansing products when it
38 introduced its innovative Clarisonic Sonic Skin Cleansing System (the “Clarisonic System”) in
39 2004. The Clarisonic System employs motion and forces at sonic frequencies to cleanse, soften,
40 and smooth skin.

2. Prior to the introduction of the Clarisonic System, there were no sonic facial cleansing devices on the market. PBL created today's market for such products.

3. The Clarisonic System has been an enormous success and has achieved national recognition and awards. In 2010, PBL was named one of Inc. 500's Fastest Growing Private Companies.

4. PBL received broad protection for its innovations, including utility and design patents. However, PBL's innovations have been the subject of widespread imitation by others, who have attempted to capitalize on PBL's success.

5. Defendant NutraLuxe is one such imitator. After seeing PBL's success, NutraLuxe introduced its NutraSonic 4-Speed facial cleansing system ("NutraSonic 4-Speed") and NutraSonic Travel/Companion facial cleansing system ("NutraSonic Travel"). NutraLuxe has made the NutraSonic 4-Speed and NutraSonic Travel work and look like PBL's products, thereby infringing PBL's patents.

6. NutraLuxe sells or has sold the NutraSonic 4-Speed and NutraSonic Travel throughout the United States at least through Amazon.com, <http://www.amazon.com/Nutra-Sonic-1020-Professional-Cleansing/dp/B002RZKFAQ/> and <http://www.amazon.com/Nutra-Sonic-0046-Companion-Professional/dp/B004UOTVG6/>.

7. PBL seeks to stop NutraLuxe's infringing conduct and obtain compensation for the violations that have occurred thus far.

II. PARTIES

8. Plaintiff PBL is a Washington corporation incorporated in January 2001, with its principal place of business at 17275 NE 67th Court, Redmond, WA 98052.

9. In December 2011, PBL was acquired by L'Oréal S.A., a French société anonyme (“L'Oréal”). L'Oréal is the owner, and PBL is the exclusive U.S. licensee with the right, *inter alia*, to bring suit, of protectable patent rights as described herein.

10. On information and belief, Nutra-Luxe M.D., LLC is a limited liability company organized and existing under the laws of Florida with its principal place of business at 6835 International Center Blvd. Unit 5, Fort Myers, FL 33912.

11. On information and belief, NutraLuxe manufactures, markets, and sells electric skin care devices under the name NutraSonic.

III. JURISDICTION AND VENUE

12. This case arises under the patent laws of the United States, 35 U.S.C. § 101 et seq.

13. The Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. §§ 1331, 1332, and 1338.

14. PBL has its principal place of business in this District, and makes its Clarisonic devices available for sale in this District.

15. This Court has personal jurisdiction over NutraLuxe because, on information and belief, NutraLuxe has committed and continues to commit the acts violating PBL's intellectual property described herein within the State of Washington, including in this District, and places infringing products into the stream of commerce, with the knowledge or understanding that such products are sold in the State of Washington, including in this District.

16. Venue is proper in this District pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1332, and 28 U.S.C. § 1333 because, *inter alia*, PBL's principal place of business is within this District and PBL suffered harm in this District, because a substantial part of the events giving rise to the claims against NutraLuxe occurred and are occurring in this District, and because NutraLuxe transacts business within this District and offers for sale in this District products that infringe PBL's intellectual property.

IV. BACKGROUND

17. Since the early 2000s, PBL has designed, developed, manufactured, marketed, and sold in the United States (and worldwide) its innovative Clarisonic System, which is a line of skin care products including a number of Sonic Cleansing Brushes and accessories, the

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1 Clarisonic Opal® Sonic Infusion System, and targeted treatment solutions. Examples of
 2 Clarisonic products are pictured below:
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 20 18. The Clarisonic System was developed by PBL over many years at great expense
 21 and effort and represents a breakthrough in devices and methods for treatment of early stage acne
 22 and for effective cleansing of skin. Those devices and methods employ motion and forces at
 23 sonic frequencies to cleanse, soften, and smooth skin. They alleviate clogged pores and remove
 24 debris from skin more gently and effectively than alternative devices or methods, such as manual
 25 cleansing.
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31 19. The innovations embodied in the Clarisonic System are protected by numerous
 32 United States and foreign intellectual property rights, including rights deriving from patents.
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35 20. Prior to the introduction of the Clarisonic System, there were no sonic facial
 36 cleansing devices on the market. Indeed, before development of the Clarisonic System, no
 37 market existed for sonic skin care devices. PBL expended considerable resources to create the
 38 sonic skin care market and to educate the public regarding facial cleansing, as well as to market
 39 its sonic facial cleansing devices.
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42 21. Since its introduction, the Clarisonic System has become widely acclaimed by
 43 professionals and consumers, and has garnered many media awards from sources such as
 44 authoritative magazines in the beauty industry, Oprah's Favorite Things in 2007 on the Oprah
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Winfrey Show, Best of Sephora in 2007 and 2008, and QVC Customer Choice in 2008, 2009, and 2010.

22. The success of the Clarisonic System has spurred a large number of imitations, such as NutraLuxe's NutraSonic 4-Speed and NutraSonic Travel, pictured below.

A side-by-side comparison of two NutraSonic facial brushes. The brush on the left is the 'NutraSonic 4-Speed' model, featuring a light purple handle with a yellow control panel containing four buttons and a small LED screen. Its circular head has three concentric rows of blue and white bristles. The brush on the right is the 'NutraSonic Travel' model, which has a similar design but is much smaller and more compact, with a yellow handle and a yellow control panel. Both brushes are shown from a top-down perspective.

V. PBL'S PATENTS

U.S. Patent No. 7,320,691

23. U.S. Patent No. 7,320,691 ("the '691 patent") issued on January 22, 2008, and is entitled "Apparatus and Method for Acoustic/Mechanical Treatment of Early Stage Acne." The inventors are Kenneth A. Pilcher, David Giuliani, and Stephen M. Meginniss.

24. A copy of the '691 patent is attached as Exhibit 1.

25. PBL is the exclusive licensee having all substantial rights in and to the '691 patent, with the rights to bring enforcement actions for past, present and future infringement and to collect damages for past infringement.

26. The '691 patent has been reexamined pursuant to Reexamination Request Nos. 90/009,797 and 90/011,343. The patentability of all of the originally issued claims 1-52 of the

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1 '691 patent was confirmed pursuant to these reexamination requests, and claims 53-64 were
 2 added. A reexamination certificate issued on September 20, 2011. *See Exhibit 1.*
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6 27. The '691 patent is valid, enforceable, and currently in full force and effect.
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U.S. Patent No. D523,809

9 28. U.S. Patent No. D523,809 ("the D'809 patent") issued on June 27, 2006, and is
 10 entitled "Charger for an Electric Skin Brush." The inventors are Dane M. Roth, Robert E.
 11 Akridge, and Kenneth A. Pilcher.
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14 29. A copy of the D'809 patent is attached as Exhibit 2.
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17 30. PBL is the exclusive licensee having all substantial rights in and to the D'809
 18 patent, with the rights to bring enforcement actions for past, present and future infringement and
 19 to collect damages for past infringement.
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22 31. The D'809 patent is valid, enforceable, and currently in full force and effect.
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CLAIM I – INFRINGEMENT OF THE '691 PATENT

25 32. PBL hereby incorporates and realleges Paragraphs 1 - 31 as if fully set forth
 26 herein.
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29 33. NutraLuxe has been and/or is directly infringing one or more claims of the '691
 30 patent pursuant to 35 U.S.C. § 271(a), literally or under the doctrine of equivalents, by making,
 31 using, offering to sell, and/or selling in the United States and/or importing into the United States,
 32 products, devices, or systems that are covered by the '691 patent, including the NutraSonic 4-
 33 Speed and NutraSonic Travel.
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36 34. PBL has consistently and continuously marked its products with the '691 patent
 37 number pursuant to 35 U.S.C. § 287 and has provided constructive notice of the '691 patent.
 38 PBL seeks monetary and all other damages permitted by statute.
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41 35. NutraLuxe's infringement of the '691 patent has been and will continue to be
 42 willful and deliberate, by making, using, offering to sell, and/or selling in the United States
 43 and/or importing into the United States, infringing devices despite that such actions constitute
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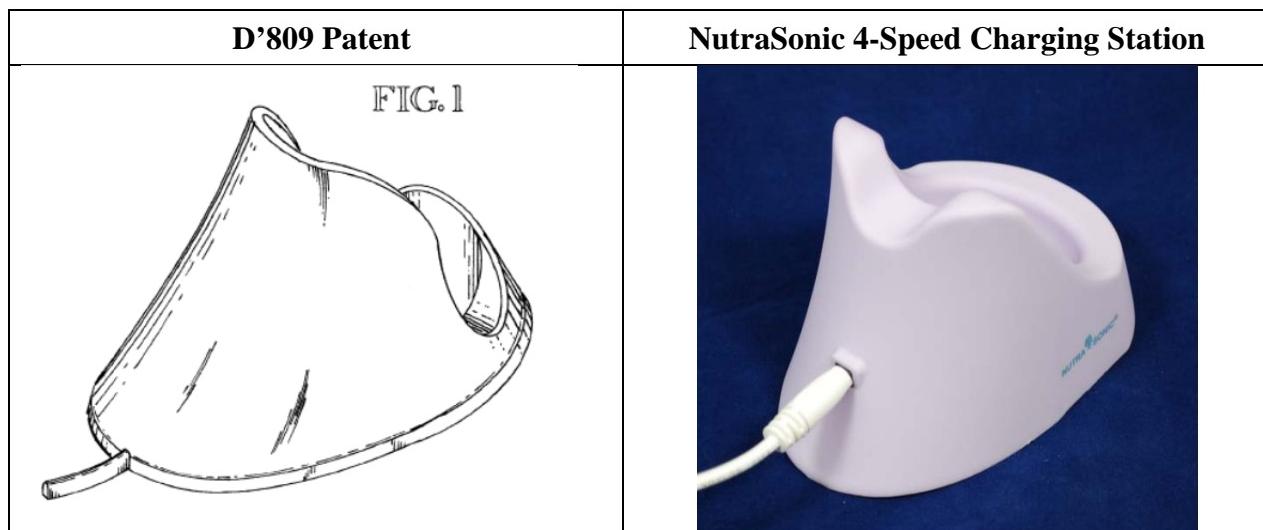
infringement and despite being at least on constructive notice that its actions constitute infringement.

36. NutraLuxe's infringement of the '691 patent has caused and will continue to cause PBL substantial and irreparable injury, for which PBL is entitled to all of the relief provided by 35 U.S.C. §§ 281, 283, 284, and 285, including but not limited to injunctive relief, compensatory damages not less than the amount of a reasonable royalty, interest, costs, enhanced damages, and reasonable attorney's fees, as the court deems just and appropriate.

CLAIM II – INFRINGEMENT OF THE D'809 PATENT

37. PBL hereby incorporates and realleges Paragraphs 1 - 36 as if fully set forth herein.

38. NutraLuxe has been and/or is directly infringing the D'809 patent pursuant to 35 U.S.C. § 271(a), by making, using, offering to sell, and/or selling in the United States and/or importing into the United States, products, devices, or systems that embody the design covered by the D'809 patent, including the NutraSonic 4-Speed.



39. PBL has consistently and continuously marked its products with the D'809 patent number pursuant to 35 U.S.C. § 287 and has provided constructive notice of the D'809 patent. PBL seeks monetary and all other damages permitted by statute.

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1 40. NutraLuxe's infringement of the D'809 patent has been and will continue to be
 2 willful and deliberate, by making, using, offering to sell, and/or selling in the United States
 3 and/or importing into the United States, infringing devices despite that such actions constitute
 4 infringement and despite being at least on constructive notice that its actions constitute
 5 infringement.
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8 41. NutraLuxe's infringement of the D'809 patent has caused and will continue to
 9 cause PBL substantial and irreparable injury, for which PBL is entitled to all of the relief
 10 provided by 35 U.S.C. §§ 281, 283, 284, 285, and 289, including but not limited to injunctive
 11 relief, compensatory damages not less than the amount of a reasonable royalty, interest, costs,
 12 enhanced damages, NutraLuxe's profits, and reasonable attorney's fees, as the court deems just
 13 and appropriate.
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23 **VI. DEMAND FOR JURY TRIAL**

24 Pursuant to Rule 38 of the Federal Rules of Civil Procedure, PBL respectfully requests a
 25 trial by jury of all issues properly triable by jury.
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28 **VII. PRAYER FOR RELIEF**

29 WHEREFORE, PBL prays for relief, as follows:
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32 A. A judgment that NutraLuxe has infringed one or more claims of the '691 patent;
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35 B. A judgment that NutraLuxe has infringed the D'809 patent;
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38 C. An order and judgment preliminarily and permanently enjoining NutraLuxe and
 39 its officers, directors, agents, servants, employees, affiliates, attorneys, and all others acting in
 40 privity or in concert with them, and their investors, partners, parents, subsidiaries, divisions,
 41 successors, and assigns, from further acts of infringement of PBL's asserted patents;
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44 D. A judgment awarding PBL all damages adequate to compensate for NutraLuxe's
 45 infringement of PBL's asserted patents and/or NutraLuxe's total profits pursuant to 35 U.S.C.
 46 § 289, and in no event less than a reasonable royalty for NutraLuxe's acts of infringement,
 47 including all pre-judgment and post-judgment interest at the maximum rate permitted by law;
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E. A judgment declaring that NutraLuxe's infringement of the asserted patents has been willful and deliberate;

F. A judgment awarding PBL all damages, including treble damages, as a result of NutraLuxe's willful and deliberate infringement of the asserted patents, pursuant to 35 U.S.C. § 284, together with pre-judgment and post-judgment interest;

G. A judgment declaring that this case is exceptional and awarding PBL its expenses, costs, and attorney's fees in accordance with 35 U.S.C. §§ 284 and 285 and Rule 54(d) of the Federal Rules of Civil Procedure; and

H. Such other and further relief as the Court deems just and proper.

DATED: May 1, 2015

Respectfully submitted,

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